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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| UNITED STATES OF AMERICA, | : | |
| | : | |
| -against- | : | 19-CR-537 (VEC) |
| | : | |
| ISMAEL JIMENEZ-MARTINEZ, | : | <u>ORDER</u> |
| | : | |
| Defendant. | : | |
| ----- | X | |

VALERIE CAPRONI, United States District Judge:

WHEREAS on May 15, 2020, Mr. Jimenez-Martinez moved for compassionate release pursuant to 18 U.S.C. § 3582(c) (Dkt. 39);

WHEREAS on May 26, 2020, the Government opposed Mr. Jimenez's motion (Dkt. 41);

WHEREAS a court may, according to the plain language of the statute, reduce Mr. Jimenez's sentence under the rubric of compassionate release *only* "upon motion of the Director of the Bureau of Prisons" or "upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier," 18 U.S.C. § 3582(c)(1)(A);


WHEREAS the petition filed with the BOP by Mr. Jimenez on April 15, 2020 was a request for release to home confinement pursuant to 18 U.S.C. § 3624 rather than a motion for compassionate release pursuant to § 3582(c) (Dkt. 41, Exs. 1-2);

IT IS HEREBY ORDERED THAT: Petitioner's motion for compassionate release is DENIED. There is no indication that Mr. Jimenez has filed a motion for compassionate release with the warden, and, as such, Petitioner has not exhausted his administrative remedies. Even if Petitioner had exhausted his administrative remedies, however, the motion would be denied on

the merits. Petitioner fails to demonstrate “extraordinary and compelling reasons” warranting the sentence reduction. Although Mr. Jimenez has asthma, which, if moderate or severe, increases his risk of severe illness or death if he were to contract COVID-19, he is not currently ill from COVID-19 or anything else. His recent presentence report indicated that he was in good health. Moreover, his release at this point, after serving only two months of a fourteen month sentence, would not be an adequate punishment for his crime, considering the applicable factors set forth in 19 U.S.C. § 3553(a).

SO ORDERED.

**Date: May 28, 2020
New York, NY**



VALERIE CAPRONI
United States District Judge